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The impact of disinformation during the COVID-19 pandemic and its regulation by the EU

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ABSTRACT: This article aims to point out the main suggestions of regularisation by the European Union of disinformation in the internet. To do so, initially, we will point out what disinformation is and how it became popular through social media. Afterwards, some suggestions for regularization will be listed, along with an assessment of the impact this could have on the fundamental rights of citizens.

KEYWORDS: disinformation – internet – fake news – EU – fundamental rights.

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1. Introduction

The internet as a means of communication has become more democratic. Some authors even argue that the internet has become a fundamental right and an obligation of the State.¹

During the COVID-19 pandemic that has overtaken the planet, the internet has been essential. It has been thanks to the internet that millions have kept their jobs by being able to work from home.

Even though there are many advantages, the internet also gave us many challenges, such as the disinformation and false narratives, colloquially known as “fake news”.

“Fake news” has been a problem for a few years, and the EU has been attentive to the matter, but unfortunately with the COVID-19 pandemic, the problem has increased. The coronavirus pandemic has shown that social media and the lack of tools to stop the spread of misinformation have the power to shape behaviour and to threaten public health. This way, many have called the European Union (“EU”) into action, demanding a more proactive role. This paper aims to explore the solutions the EU has deployed to combat disinformation and the role of the EU on this matter.

2. The conceptualisation of disinformation and its spread

Firstly, it is essential to point out that the term “fake news” could be divided into two terms. The first one is “disinformation”, which is the information that is not correct and that is spread intentionally, most of the time with the intention of destabilisation of governments or States, while the second term is “misinformation”, which is the information that is imprecise but is not spread intentionally. Both are not illegal but are dangerous and need to be fought against.²

Disinformation is not a new phenomenon. In our society, lies and misinformation about facts has been around us since time immemorial. Nevertheless, with the creation of the internet, this deeply changed. Fake news as we know it now is the creation of false narratives that are full of details that they are almost real, but, in fact, are not. The range of false narratives is also very broad. False news with misleading information, parodies, and other false narratives that contain absurd content. All do considerable damage to an individual’s pursuit of facts to explain the events take place, whether nationally or globally. The main problem that we are going to discuss in this article is the false narratives that aim to harm and falsely inform people about any kind of subject (the first case).

This kind of misinformation found a perfect place to spread with the creation of social media. Social media are online platforms that were at first, designed to connect friends through the internet. They are easy to use, have the capacity to spread information rapidly and to reach billions of people instantaneously. Initially, social media was used only to publish personal information, family photos, everyday life, and so on. But when these platforms became profitable, their use evolved.

The possibility of profit with social media changed the use of it. To make it easier for advertisers, new algorithms were created to spot users’ preferences of content and

¹ “Rights and principles applicable when you access and use online services”, European Commission, last modification June 20, 2018, <https://rb.gy/c5zpm4>.

² On this article the term that is adopted is disinformation. Rasmus Kleis Nielsen and Lucas Graves, “‘News you don’t want to believe’: audience perspectives on fake news”, Reuters Institute for the Study of Journalism, University of Oxford, 2017, accessed August 10, 2020, <https://www.digitalnewsreport.org/publications/2017/news-dont-believe-audience-perspectives-fake-news/>.

shape the ads each user would see. If a user is pregnant and only posts pregnant pictures of herself, she will likely see adds of baby's goods, clothes, and toys for example. But this algorithm also has a downside, it creates filter bubbles. Besides the filter of ads, the algorithm will also filter other types of content, for example, political views and media outlets, which may lead to polarisation.³

Disinformation uses two main tools to thrive and spread on social media: the algorithms and filter bubbles that already existed for other purposes, and advertisement principles to predict how the users think when they are using social media platforms, what content they find attractive, and how it needs to be written to get more likes and shares. We can safely say that disinformation has “cracked the code” of user's behavior to its advantage.

Disinformation needs to get a fast response from the social media users. Without it, there is no influence because the social media pace is very fast. If the information does not make a quick impact, it will be forgotten. This way, many of the false narratives that are shared on social media are appellative (*i.e.* they need to cause public indignation and outrage). Above all, false narratives need to be more appellative than truthful news.⁴

Disinformation and fake news have been on the watch for a while. The World Economic Forum warned the world about it in 2014,⁵ and in 2017 “fake news” was considered the word of the year by the Collins dictionary. The EU has been developing a strategy on how to stop the spread of fake news since 2018 by creating a high group on fake news and online disinformation.

Based on it, it is possible to see how social media changed the internet deeply, its use, the way platforms are designed for and how disinformation has been using them to its advantage. But what is the motivation behind the disinformation and who spreads it?

3. The motivations behind the disinformation and its authors and spreaders

Users of any social media platform can affirm that disinformation comes in different formats. We can see it on videos, images, and texts. The same logic applies to the motivations that are behind disinformation, as there are several and they are more complex than we can imagine.

One of the most infamous false narratives and disinformation campaigns known are the ones that aim to influence the user's political decisions. This happened during the presidential election of the United States of America⁶ and the Brexit vote⁷ both in 2016.

³ Malgorzata Nguyen Thi Borkowska, “The implications of filter bubbles in social media and the impact on the society”, IDare, accessed August 10, 2020, <https://www.idareact.org/the-implications-of-filter-bubbles-in-social-media-and-the-impact-on-the-society/>.

⁴ Klaus Sachs-Hombach and Bernd Zywiets, *Fake news, hashtags & social bots: neue methoden populistischer propaganda* (Wiesbaden: Springer, 2018), 75.

⁵ Farida Vis, “Top 10 trends of 2014: 10. The rapid spread of misinformation online”, accessed October 3, 2020, <http://reports.weforum.org/outlook-14/top-ten-trends-category-page/10-the-rapid-spread-of-misinformation-online/>.

⁶ Alexandre Bovet and Hernán A. Makse, “Influence of fake news in Twitter during the 2016 US presidential election”, *Nature communications*, v. 10, no. 1 (2019): 1-14.

⁷ Ivan Dunt, “New study show Brexit is drenched in fake news”, Politics.co.uk, accessed October 3, 2020, <https://www.politics.co.uk/blogs/2018/10/29/new-study-shows-brexit-is-drenched-in-fake-news>.

Social media has a wide range of users: teachers, students, salesmen, politicians, comedians, actors, organizations and so on. Each user has different motivations to use social media, some use to spread information, others to get informed, others to talk to friends, others to get voters on the next election. This logic can be applied also to the authors of disinformation.

The authors behind disinformation can vary, such as other States,⁸ foreign political parties and even the opposition in an election process. The EU has addressed the matter creating in 2015, the East StratCom Task Force,⁹ that had the main objective of addressing Russia's disinformation campaigns.

But the spread of the disinformation created by these authors is a different matter. We might think that most of the disinformation spread online is done by real people, but this is also erroneous. The spread of false narratives in 2016 was done mainly, through the use of bots.¹⁰

Social bots are programs that are created to simulate real people on social media. The bots appear to be a person, but they are not. Usually, they have a few characteristics that make them easy to notice. Most of the bots follow an agenda about a subject, it can be, for example, support a political party or personality. The bot can be noticed because a normal social media user talks about a wide range of subjects and only uses social media during a few hours of the day and does not post frequently. On the other hand, the bot is different, as it only talks about a subject and usually posts a large number of posts per hour.

Indiana University and the University of South California developed an algorithm to identify bots on social media. According to the algorithm's results, 9 to 15% of the users on Twitter users (about 45 million accounts) are controlled by social bots.¹¹ To reach the bigger audience of real users, the bots accounts converse with each other, creating a narrative that may give the sensation to users that there is a consensus about a subject.¹²

Despite the fact that bots are the ones effectively sharing disinformation online, it is important to know who is the real intellectual author of that content, and who is profiting from it. This is what we are going to discuss shortly.

4. The COVID-19 infodemic

Disinformation had been a challenge for a few years and became even worse when the COVID-19 pandemic spread.

When the endemic became a pandemic and spread around the world, and the Coronavirus victims number started to increase, copious amounts of false information about possible cures were shared on the internet. This is the reason why the World Health Organization ("WHO") called this range of false information an infodemic.¹³ According to the WHO, an infodemic is when information is abundant

⁸ W. Lance Bennett and Steven Livingston, "The disinformation order: disruptive communication and the decline of democratic institutions", *European Journal of Communication*, v. 33, no. 2 (2018): 122-139.

⁹ "Questions and answers about the East StratCom task force", European Union External Action, accessed October 3, 2020, https://eeas.europa.eu/headquarters/headquarters-homepage/2116/-questions-and-answers-about-the-east-stratcom-task-force_en.

¹⁰ Sachs-Hombach and Zywiets, *Fake News*, 57.

¹¹ Sachs-Hombach and Zywiets, *Fake News*, 67.

¹² Uwe Glässer, Huan Liu and Rafael Wittek et al., *Disinformation, misinformation and fake news in social media: emerging research challenges and opportunities* (Switzerland: Springer, 2020), 65.

¹³ "1st WHO Infodemiology Conference", World Health Organization, Event 21 July, 2020, <https://www.who.int/infodemicology>.

about a topic during the pandemic, within which there may be truthful information and/or false information.

As far as we know, China was the first place to notify the existence of the new Coronavirus and to notice the spread of COVID-19. Thus, it is yet too soon to affirm scientifically how the virus emerged. However, the scarce and poorly detailed information sent by the Chinese authorities about the state of the pandemic led to the creation of several disinformation stories, such as the virus was created in a laboratory as a biological weapon, that became a source of xenophobia and racism towards the Chinese people.

Later, as the COVID-19 spread around the world many false narratives about possible cures or ways to keep healthy against the virus were shared, some even by politicians around the world. This caused a series of problems, hundreds died because of COVID-19 misinformation online that led them to drink methanol or cleaning products to stop the spread of the virus.¹⁴

Initially, the response from the EU to fight disinformation during the pandemic was based on four points: improve the capacity of EU institutions to detect, analyse and expose disinformation, have a coordinated and joint response, work with the private sector and raise the awareness from society.¹⁵

Nevertheless, now after the first months of the pandemic have passed, society has urged the Member States and the European Union to take a more active role in the fight against disinformation, which we are going to discuss next.

5. Solutions to fight disinformation and EU actions

Since we now have an idea of how disinformation has spread with the help of social media and with the help of bots, we can point out what the right solutions are to fight this problem and an assessment of the lawfulness of these solutions. Also, it is important to point out that the faster the disinformation is detected, the more efficient the mechanism, to fight it, has to be.¹⁶

The best approach to fight disinformation is to take a multilateral proactive approach and examine the different solutions presented to show this. Disinformation has different roots and different ways to be spread online. Ergo, the solutions to fight it must have different angles as well.

Regarding the EU competence to regulate disinformation, the Principle of Conferral determines that the EU will only act when the actions are inside the limits of the permissions given by the diverse Treaties that were signed by the Member States. Article 4 of the Treaty on the Functioning of the European Union (“TFEU”) handles the shared competences and amongst them is Consumer Protection, which holds a series of subjects including internet user rights. This way, it is clear that the EU has the competence to regulate the dissemination of disinformation and false narratives on the internet.

Now we must analyse the many solutions proposed and the legality of them.

who.int/news-room/events/detail/2020/06/30/default-calendar/1st-who-infodemiology-conference.

¹⁴ Md Saiful Isma and Tonmoy Sarkar et al., “Covid-19 related infodemic and its impact on public health: a global social media analysis”, *The American Journal of Tropical Medicine and Hygiene* (2020), doi:10.4269/ajtmh.20-0812.

¹⁵ Yana Brovdiy, “Disinformation in times of COVID-19: reinforcing the responses of the European Union and the United States”, College of Europe Policy Brief, 2020.

¹⁶ Glässer, Liu, Wittek et al., *Disinformation*, 28.

5.1. Media literacy

The first group of solutions presented to fight disinformation is social media literacy. To reinforce the education of social media users is the best way to avoid disinformation. Schools can also have a role, besides teaching children about several related subjects, they can also be an ally to teach children to have responsible behavior online and learn to do fact-checking. Many countries, such as Italy, already started programs that include media literacy.¹⁷

Media literacy at school can start by reasserting the interpretation of ads and the new types of ads online, to understand today's conflicts regarding online behaviors, learn how to understand facts before making any conclusions.¹⁸

The EU has been encouraging media literacy of citizens by providing funds for projects that promote media literacy, promoting conferences and databases regarding the subject, and especially, developing policy regarding media literacy publishing reports.¹⁹ Eventually, the goal is to make citizens develop skills so that they can, by themselves, be capable of distinguishing false narratives from the truth, and opt for the latter mentioned.²⁰

Regarding the lawfulness of these measures taken by the EU, Articles 10 and 11 of the Charter of Fundamental Rights of the European Union protect the freedom of thought, conscience, expression, and information respectively. Media literacy is an expression of those rights. The education of citizens about the problem and why false narratives are dangerous is a way to reinforce freedom of expression and thought. Such rights are only effectively used when citizens have the correct information. A thought or opinion based on false information is so prejudicial to the freedom of thought such as censorship.

5.2. Social media platforms actions

With the increase of news and problems caused by disinformation, the EU and civil society have been requesting several actions to be taken by online platforms.

The first actions that need to be taken are to improve the scrutiny of advertisement that is placed on social media. Once we know that several false narratives were spread on social media through advertisement, it is needed to have a more transparent system so the payers of these ads can be identified and eventually punished for the spread of disinformation that can be harmful, especially on the context of the COVID-19 pandemic.

Transparency about algorithms also can be addressed by social media platforms. Many users have no idea that algorithms exist and how they work to shape what they see online. It is important to let the users know about it and explain it to them. Of course, each social media has its specifications, so these measures need to be specific to each context and each platform.

Social media platforms also can use artificial intelligence and bots to do good and detect fake news content and profiles on social media, since it is not a simple task to

¹⁷ Piermarco Aroldi and Maria Francesca Murru, "Media and Information Literacy Policies in Italy (2013)", Università Cattolica del Sacro Cuore, 2014.

¹⁸ J. McDougall, M. Zezulkova, B. van Driel and D. Sternadel, *Teaching media literacy in Europe: evidence of effective school practices in primary and secondary education: NESET II report* (Luxembourg: Publications Office of the European Union), DOI: 10.2766/613204.

¹⁹ McDougall, Zezulkova, van Driel and Sternadel, *Teaching*.

²⁰ "Legal framework to address 'fake news': possible policy actions at the UE level", Centre for European Policy Studies and College of Europe, Strasbourg, 2018.

do personally – as said before there are about 45 million bots accounts only on Twitter. Detecting those would be almost an impossible task to humans.

Some measures already have been implemented, for example, the use of an algorithm that favors reliable information rather than unchecked facts and the creation of tools that allow users to report disinformation or warnings to users that the information they are reading is not reliable.²¹

Regarding the actions of EU on this matter, two weights need to be levelled: the reinforcement of freedom of expression of social media users and a necessity to take action asking for more transparency by the social media platforms. To reach this balance, the EU has created in 2018 the EU Code of Practice on Disinformation.²² This code was signed by many online platforms like Google, Facebook, Twitter amongst others, which agreed to create self-regulatory measures to fight disinformation.²³

The Code of Practice on Disinformation does not have any kind of sanctions that can be imposed to social media platforms if they fail to fulfil the Code. There are only recommendations that can be accepted or not. Society has been requesting the creation of stricter rules because of the lack of action by the social media platforms, especially during the COVID-19 pandemic and the spread of disinformation.²⁴

It is important to know that the creation of stricter rules is a very delicate subject. First, because of the Directive 2000/31/EC of July 8th, 2000 that handles the eventual responsibilities of service providers on online sales. At the moment, Articles 14 and 15 of the Directive determine that the providers will not be responsible for any misinformation or illegal activity in case they do not know that action. On the other hand, Article 15 makes it clear that when the providers learn of possible misinformation or illegal activity, they have to give notice to the government and provide the data if needed. However, due to changes that happened on online sales over the last 20 years, it is relevant to state that there has been a discussion about the need to review this Directive.²⁵

By this we mean that there is a legal possibility that the EU creates new and more incisive mechanisms to demand that online platforms abide by the Code of Practice on Disinformation that they signed to, answering with transparency and respect to the users, without this being an unlawful intervention of the government and disrespect to freedom of expression of citizens.

5.3. Content moderation and fact-checking

Fact-checking and content moderation are crucial measures to fight the spread of disinformation. They may seem the same thing but they are not. Content moderation is often situated in social media platforms and is ruled by its rules, content moderation

²¹ European Commission, *A multi-dimensional approach to disinformation: Report of the independent High-level Group on fake news and online disinformation* (Luxemburg: Publications Office of the European Union, 2018), 12.

²² “European Code of Practice on Disinformation”, European Commission, Brussels, 2018, <https://op.europa.eu/pt/publication-detail/-/publication/6ef4df8b-4cea-11e8-be1d-01aa75ed71a1>.

²³ “Annual self-assessment reports of signatories to the Code of Practice on Disinformation”, European Commission, October 29, 2019, <https://ec.europa.eu/digital-single-market/en/news/annual-self-assessment-reports-signatories-code-practice-disinformation-2019>.

²⁴ “The EFJ calls for stronger measures to tackle online platforms’ disinformation”, European Federation of Journalists, last modification on June 15, 2020, <https://rb.gy/eyaqzm>.

²⁵ “Reform of the EU liability regime for online intermediaries: Background on the forthcoming digital services act”, European Parliament Think Tank, April 20, 2020, [https://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_IDA\(2020\)649404](https://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_IDA(2020)649404).

aims to find posts that contain forbidden content and remove them. On the other hand, fact-checking is a task that aims to point out that the information that was shared is false and what the right information about that subject is.²⁶

At first, it is important to know that social media platforms will never wipe their platforms of false narratives and other illegal content. But this impossibility must push platforms to improve their content moderation systems.

The creation of fact-checking groups is very important. These groups can be created by third parties or by media outlets. The EU has been encouraging the creation of an independent network of fact-checkers, so there is the establishment of common working methods in Europe. Usually, these groups are located in Journalism schools.²⁷ This project aims to cover all Europe with fact-checking groups and create a joint fact-checking system. The European traditional media outlets have been developing fact-checking systems, such as BBC Fact Check, the collaboration of RAI 2 with Pagella Politica, the German tv channel ARD-Aktuell and the Portuguese “Polígrafo SIC”. This is a good move since building up trust in traditional media is one of the measures to fight false narratives and disinformation.

Nevertheless, the most crucial need is the improvement of content moderation on social media platforms to avoid the dissemination of false content on the root of the problem. But there is a clear problem about that since only 50% of the content that violates platform’s terms and conditions are removed when published.²⁸

In Facebook, content moderation started first in 2008 due to the Section 230 of the Communications Decency Act of 1996 in the United States,²⁹ at first, it was a simple task due to the small size of the social network, but due to the rapid growth of the platform, the system changed. Instead of hiring new content moderators, Facebook decided to rely on users giving it warnings for any false news and/or to be on observant for malicious content. In 2016, Facebook had 1.7 billion users and only 4,500 content moderators that were mostly hired by third-party enterprises.³⁰

With the COVID-19 pandemic, the problem has only increased, and many have been pointing out the inability of Facebook and other social media platforms to fight disinformation.

The encouragement of fact-checking and more strict content moderation by the EU is possible and legal since the cooperation is the best way to fight misinformation and reinforce freedom of expression. The combination of the use of fact-checking and content moderation by social media is important. Social media platforms must rely less on artificial intelligence on content moderation and hire more human moderators. Also, social media platforms can hire third-party fact-checking groups, so false information is flagged, and the credible and correct information is spread.³¹

On the other hand, the possibility of content regulation by law is delicate, even though several countries have done that such as Germany.³² If the EU aims to regulate

²⁶ Paul M. Barrett, *Who moderates social media giants? A call to end outsourcing* (New York: University of New York, Center for Business and Human Rights, 2020), 23.

²⁷ Information available at: EU factcheck, <https://eufactcheck.eu>.

²⁸ Tony Romm and Elizabeth Dwoskin, “Facebook says it will now block white-nationalist, white-separatist posts”, *The Washington Post*, March 27, 2019, <https://www.washingtonpost.com/technology/2019/03/27/facebook-says-it-will-now-block-white-nationalist-white-separatist-posts/>.

²⁹ United States of America, United States Code, 2006.

³⁰ Barrett, *Who Moderates*, 08.

³¹ Barrett, *Who Moderates*, 26.

³² Germany, Network Enforcement Act, NetzDG, 2017.

content by law it may be dangerously close to censorship. However, there are other ways. The EU can through cooperation and the creation of legislative provisions reinforcing the application of stricter rules on social media content and encourage the creation of more ethical algorithms that do not promote disinformation.

5.4. Follow the money policies on ads

As said before, disinformation got so popular online especially on social media because it has adopted a series of principles used by marketing to get the attention of users. But this does not exclude the use of actual ads mechanisms to spread, such as promoted content.

Today, it is possible for any user on Facebook or Twitter to pay the social media platform to promote their content, this content may be a video, an image, an ad or simply a text exposing ideas. Using this mechanism, a series of users were able to promote ads and expand the usual reach of their posts on social media. It is safe to say then, that social media platforms are getting money to spread disinformation for their users.

There are many ways to find this mechanism of spreading disinformation. The first one, the most delicate measure, is to create a black-list of banned advertisers, the ones that are known to spread disinformation on social media. This is problematic because it restrains and does not go after the real problem that is behind the advertisers, besides the fact that advertisers can use a series of strategies to hide their true identity online, which makes the task even harder.³³

Creating a policy of transparency of advertisers is the best choice on this matter. Social media platforms must be cooperative and need to demand transparency from their advertisers before publishing ads on their platforms. This way, instead of creating a black-list, social media platforms can create a white list, where only advertisers that are transparent about their revenue and content are added.³⁴

Again, the key is cooperation between advertising companies, the social media platforms and the EU. It is not possible or even legal for the government to create a black -list of advertisers and ban them from publishing on social media. It is through the efforts of all that we will be able to reach a disinformation-free landscape in the future.

6. Conclusion

As we have seen in this article, disinformation and misinformation are complicated and present a significant problem that we have to face while we are online. With the COVID-19 pandemic, disinformation has become a health threat for citizens of the world.

It is the job of all of us to fight disinformation through many fronts. It is the citizens' job, as users of social media platforms to get informed, to fact-check information that we see online before sharing. Thus, it is the government's role to support media literacy programs, so citizens can learn the basic functions of social media and the dangers of disinformation.

³³ Joshua A. Braun and Jessica L. Eklund, "Fake news, real money: ad tech platforms, profit-driven hoaxes and the business of journalism", Journalism Faculty Publication Series, 2019, 13, DOI: 21670811.2018.1556314.

³⁴ Braun and Eklund, "Fake news, real money", 14.

Also, cooperation between the government and social media platforms is needed. Social media platforms need to be more transparent with how their platform works and who are its permitted advertisers. It is the user's right to know how the social media platform works, what personal data is being taken and why it is being taken.

This way, it is legal for the EU to coordinate cooperation and ensure that social media platforms become more and more transparent with the public. This is also a way of protecting freedom of speech and thought as a fundamental right, without taking measures that can be considered censorship.